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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

6 EDDIE SOWELL SMITH,

7 Plaintiff,

8 v.

9 CORRECTIONAL OFFICER SARIBAY, *et*  
10 *al.*,

11 Defendants.  
12  
13

Case No. 2:20-CV-00060-GMN-VCF

**ORDER CORRECTING SCREENING  
ORDER (ECF No. 8) AND FOLLOW UP  
ORDER (ECF No. 10)**

14 **I. DISCUSSION**

15 On January 20, 2021, the Court issued a screening order on Plaintiff's complaint.  
16 ECF No. 8. In the body of the screening order, the Court found that Plaintiff failed to state  
17 a cognizable First Amendment claim arising from Jovi Esguerra's<sup>1</sup> order to Plaintiff to be  
18 quiet when he was able to hear Plaintiff engaging in prayer while Esguerra was standing  
19 outside of Plaintiff's cell while the North Tower was on lockdown and the tier was quiet.  
20 *Id.* at 11. The Court also found that Plaintiff had not alleged a colorable First Amendment  
21 free exercise of religion claim arising from Esguerra's imposition of the first 48-hour  
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23 <sup>1</sup> Consistent with the Court's Order to Show Cause (ECF No. 29) and Jovi  
24 Esguerra's Answer to Complaint (ECF No. 30), the Court identifies Esguerra using the  
25 spelling of his name that Esguerra indicates is correct, rather than the spelling Plaintiff  
used to sufficiently identify Esguerra in the complaint.

1 lockdown. *Id.* at 11-12. The Court subsequently erred, however, in ordering that these  
2 claims could proceed in the conclusion section of the screening order and in a  
3 subsequent follow up order. *Id.* at 17, ECF No. 10 at 2-3. Consistent with the findings in  
4 the body of the screening order, the Court intended to dismiss, without prejudice with  
5 leave to amend, Plaintiff's claims that Esguerra violated his First Amendment right to free  
6 exercise of religion in the conclusion section of the screening order. The Court hereby  
7 corrects this error, dismisses these claims without prejudice and will provide Plaintiff an  
8 opportunity to amend these claims consistent with the Scheduling Order entered on April  
9 13, 2021 (ECF No. 23). Specifically, if Plaintiff elects to amend these claims, he shall file  
10 a motion for leave to amend that complies with Local Rule 15-1, which must be filed and  
11 served no later than **June 14, 2021**.

12       If Plaintiff chooses to move for leave to file an amended complaint, he is advised  
13 that an amended complaint entirely replaces the original complaint and, thus, the  
14 amended complaint must be complete. *See Hal Roach Studios, Inc. v. Richard Feiner &*  
15 *Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (holding that "[t]he fact that a party was  
16 named in the original complaint is irrelevant; an amended pleading supersedes the  
17 original"); *see also Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding  
18 that for claims dismissed with prejudice, a plaintiff is not required to reallege such claims  
19 in a subsequent amended complaint to preserve them for appeal). To be complete, an  
20 amended complaint must contain all claims, defendants, and factual allegations that a  
21 plaintiff wishes to pursue in his lawsuit. Moreover, an inmate should file the amended  
22 complaint on this Court's approved prisoner civil rights form, and it must be entitled "First  
23 Amended Complaint."

1 The Court further reminds Plaintiff that the Court identified the deficiencies of his  
2 First Amendment Free Exercise of Religion claims in the January 20, 2021 Screening  
3 Order. See ECF No. 8 at 11-12.

## 4 **II. CONCLUSION**

5 **THEREFORE**, for the foregoing reasons,

6 THE COURT **VACATES only** the specific portion of the January 20, 2021  
7 Screening Order (ECF No. 8, at 17, lines 20-21) that allowed Plaintiff's First Amendment  
8 Free Exercise of Religion claims to proceed against Defendant Esguerra. The January  
9 20, 2021 Screening Order (ECF No. 8) otherwise remains in full force and effect.

10 THE COURT FURTHER **VACATES only** the specific portion of the March 2, 2021  
11 Order (ECF No. 10, at 2, line 10; ECF No. 10, at 3, line 10) that allowed Plaintiff's First  
12 Amendment Free Exercise of Religion claims to proceed against Defendant Esguerra.  
13 The March 2, 2021 Order otherwise remains in full force and effect.


14 THE COURT **ORDERS** that Plaintiff's First Amendment Free Exercise of Religion  
15 claims against Defendant Esguerra, are dismissed without prejudice.

16 THE COURT FURTHER **ORDERS** that Plaintiff is granted leave to amend his First  
17 Amendment Free Exercise of Religion claims against Defendant Esguerra consistent with  
18 the April 13, 2021, Scheduling Order (ECF No. 23, at 1, para. 2). That is, Plaintiff may  
19 move for leave to amend his complaint as provided for under Fed. R. Civ. P. 15. If  
20 Plaintiff elects to move for leave to amend his complaint, the motion shall comply with  
21 Local Rule 15-1, and shall be filed and served not later than **June 14, 2021**.

22 THE COURT FURTHER **ORDERS** that the Clerk of the Court send Plaintiff the  
23 approved form for filing a § 1983 complaint, instructions for the same, a copy of his  
24 original complaint (ECF No. 9), and a copy of the Court's January 20, 2021 Screening

1 Order (ECF No. 8). If Plaintiff chooses to move for leave to file an amended complaint,  
2 he must comply with Local Rule 15-1, he must attach the proposed amended complaint to  
3 his motion, and he should use the approved § 1983 complaint form, and he must write the  
4 words "First Amended" above the words "Civil Rights Complaint" in the caption.

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7 DATED THIS 13 of May 2021.

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9 Gloria M. Navarro  
United States District Judge